

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION, INC.

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CASE NO. 93-043

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATIONS 807 KAR 5:006
AND 807 KAR 5:041

O R D E R

After its receipt of an Electrical Utility Accident Investigation Report in which Commission Staff alleged that Jackson County Rural Electric Cooperative Corporation ("Jackson County") failed to comply with Commission regulations, the Commission ordered Jackson County to show cause why it should not be penalized for its alleged failures.¹ The Commission held a public hearing in this matter at which time Jackson County appeared and presented evidence.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:²

¹ After submission of its response to the Commission's Order to Show Cause, Jackson County stipulated the facts surrounding this incident. By Orders dated July 14, 1993 and September 2, 1993, the Commission consolidated this case with Cases No. 93-044 and 93-145 for the purpose of presenting evidence and oral argument on certain legal issues. The Commission held a hearing in these cases on December 1 and 2, 1993. During this proceeding, Jackson County moved to dismiss this case.

² In this Order, the Commission addresses two issues: (1) Did Jackson County willfully violate Commission Regulation 807 KAR 5:041, Section 3, when installing a transformer on October 7, 1992 at Quail, Kentucky? and (2) Did Jackson County willfully violate 807 KAR 5:006, Section 24, by failing to execute its safety program?

1. Jackson County is a Kentucky corporation which owns and operates facilities used in the distribution of electricity to the public for compensation for light, heat, power, and other uses.

2. Jackson County is formed under the provisions of KRS 279.010 to KRS 279.220.

3. Dobson Power Line Construction, Inc. ("Dobson Power") has performed electrical construction services for Jackson County since 1968. These services include construction, rebuilding, and retirement of overhead electrical distribution lines.

4. On June 8, 1992, Dobson Power entered into a contract ("the contract") with Jackson County to construct and install certain utility plant.

5. The contract provides, inter alia, that:

a. Dobson Power's manner of performance of work and equipment are subject to Jackson County's inspections, tests, and approvals.

b. Dobson Power take all reasonable precautions for the safety of the public and employees at the work site, and comply with all applicable provisions of federal, state, and municipal safety laws and building and construction codes, as well as Jackson County's safety rules and regulations.

c. Dobson Power maintain public liability and property damage liability insurance.

d. Dobson Power comply with all applicable statutes, ordinances, rules and regulations pertaining to the work.

6. On October 7, 1992, Dobson Power was installing a transformer on a Jackson County utility pole at Quail, Kentucky.

7. At the time of the incident, Dobson Power employee Terry Parrett was installing a transformer. Above Parrett in a bucket was Dobson Power employee Lee Isaacs who was tying in a single phase line on the same pole. Dobson Power employee Terry Richardson was in charge of the work crew.

8. Isaacs cut some excess wire for the line on which he was working. This wire fell and caught on an energized single phase 7200-volt line near Parrett's position. Parrett suffered third degree burns to his hand and side when the excess line came into contact with him.

9. Prior to beginning its work, the Dobson Power work crew deenergized what it believed to be the only feed to the pole. It visually examined, but did not otherwise test, the 7200-volt single phase line in question. Additionally, no system grounds were used at the accident site.

10. At the time of the incident, Parrett was not wearing rubber gloves that had been provided for his work.

11. At the time of the incident, Jackson County owned the facilities in question.

12. At the time of the incident, Parrett, Isaacs, and Richardson were Dobson Power employees and were performing work in the scope of their employment. This work was also in the scope of the June 8, 1992 construction contract between Dobson Power and Jackson County.

13. Jackson County's safety rules, as of October 7, 1992, required Jackson County employees to:

a. treat all conductors and equipment as energized until tested or otherwise determined to be deenergized and grounded.

b. consider all previously energized conductors as energized until tested and properly grounded.

14. At the time of the incident, Dobson Power, Parrett, Isaacs, and Richardson knew the requirements of the National Electrical Safety Code and Jackson County's safety rules.

The Commission makes the following conclusions of laws:

1. Jackson County is a utility subject to Commission jurisdiction. KRS 278.010(3)(a) and 279.210.

2. KRS 278.030(2) provides that "[e]very utility shall furnish adequate, efficient and reasonable service" The delivery of safe service is synonymous with "adequate" and "reasonable" service.

3. KRS 278.280(2) provides:

The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the ***utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules*** [bold italics added].

4. Commission Regulation 807 KAR 5:041, Section 3, states:

A utility shall construct and maintain ***its plant and facilities*** in accordance with good accepted engineering practices. Unless otherwise specified by the commission, ***the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities***, herein incorporated by reference: . . . National Electrical Safety Code [bold italics added].

5. Commission Regulation 807 KAR 5:041, Section 3, requires Jackson County to maintain its plant and facilities in accordance with the standards of the National Electrical Safety Code (1990 ed.). This duty may not be delegated. It runs with the ownership of the utility plant and facilities, not with who performs the actual work. See Snyder v. Southern California Edison Co., 285 P.2d 912 (Cal. 1955).

6. National Electrical Safety Code (NESC) Section 420 (420H) requires the use of personal protective equipment, protective devices, and special tools provided for work.

7. National Electrical Safety Code (NESC) Section 421 (421A) requires a first level supervisor or person to, inter alia, adopt such precautions as are within his authority to prevent accidents and to see the safety rules and operating procedures are observed by those under his direction.

8. Parrett's failure to wear protecting equipment while working near the 7200 volt single phase line is a violation of NESC Section 420 (420H).

9. Richardson failed to performed his duties as first line supervisor and thus violated NESC Section 421 (421A).

10. Jackson County failed to comply with the NESC when constructing and maintaining its plant and facilities at the incident site.

11. A willful violation "denotes an act which is intentional rather than accidental." Screws v. U.S., 325 U.S. 91, 101 (1945). It "means 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962). See, Muncy v. Commonwealth, Ky., 97 S.W.2d 606, 609 (1936) ("The word 'wilful' in its general acceptance means intentionally, not accidentally nor involuntarily."); Huddleston

v. Hughes, Ky.App., 843 S.W.2d 901, 905 (The term "willful" does not necessarily and solely entail an "intention to do wrong and inflict injury," but may include conduct which reflects "an indifference to . . . [its] natural consequences."). See also Woods v. Corsey, 200 P.2d 208, 211 (Cal. App. 1948) (A willful violation is "one which is intentional, knowing, voluntary, deliberate or obstinate . . .").

12. The actions of Parrett and Richardson were intentional and thus their conduct was willful.

13. At the time of the incident, Parrett and Richardson were acting for Jackson County and within the scope of their employment.

14. KRS 278.990(1) states:

If any utility ***willfully*** violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500). ***Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.***
[Bold italics added.]

15. Based upon the principle of imputed liability contained in KRS 278.990(1), Jackson County willfully violated Commission Regulation 807 KAR 5:041, Section 3, by failing to comply with NESC standards while constructing and maintaining its plant and equipment. For its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3, Jackson County should be assessed a penalty of \$500.

16. Commission Regulation 807 KAR 5:006, Section 24, requires a utility to "adopt and execute a safety program appropriate to its size and type of operations." A utility fails to "execute" its safety program when it fails to enforce the safety rules which it has established.³


17. The record fails to show that Jackson County willfully failed to enforce its safety rules during the time of the incident.

IT IS THEREFORE ORDERED that:

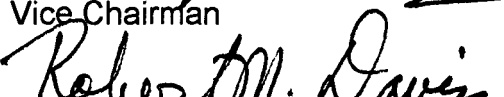
1. Jackson County's Motion to Dismiss is denied.
2. A penalty in the amount of \$500 is assessed against Jackson County for its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3.
3. Jackson County shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." This check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky, 40602.

Done at Frankfort, Kentucky, this 27th day of June, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

³ Case No. 94-013, Jackson Purchase Electric Cooperative Corporation, Inc. - Alleged Violation of Commission Regulations 807 KAR 5:006 and 807 KAR 5:041, slip op. at 3 (June 19, 1995).